

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WILLIE JAMES BILLINGTON

§

v.

§ CIVIL ACTION NO. 6:11cv204

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Willie Billington, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed for failure to secure permission to file a successive petition from the Fifth Circuit Court of Appeals, as required by 28 U.S.C. §2244(b)(3). The Magistrate Judge noted that this was the third federal habeas corpus petition which Billington had filed concerning this same conviction, of which the first was dismissed with prejudice as barred by the statute of limitations, and the second was dismissed without prejudice on Billington's motion.

Billington filed objections to the Magistrate Judge's Report on May 9, 2011. However, these objections say only that he did not consent to authorize the Magistrate Judge to conduct any and all proceedings in his case, including a jury or non-jury trial, or to authorize entry of a final judgment.

However, the Magistrate Judge did not enter final judgment in his case and has not been authorized to do so. Instead, the Court referred the proceedings to the Magistrate Judge for preliminary matters, including the entry of a Report recommending disposition of the case, as set out in 28 U.S.C. §636(b). No consent from the parties is required for a referral pursuant to 28 U.S.C. §636(b). Newsome v. EEOC, 301 F.3d 227, 230 (5th Cir. 2002). Billington has failed to show that the Magistrate Judge's Report was in error and his objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Petitioner's application for habeas corpus relief, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all other pleadings and documents in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are OVERRULED and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice, subject to receipt of permission from the Fifth Circuit Court of Appeals to file a successive petition. Billington may refile his petition at such time as he obtains permission to do so, but may not refile without such permission. It is further

ORDERED that the Willie Billington is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate relates only to an appeal of this case, and shall have no effect upon Billington's right to seek permission to file a successive petition, nor to fully pursue such petition upon receipt of such permission. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

SIGNED this 17th day of May, 2011.